

## Message Text

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43

ACTION OPIC-12

INFO OCT-01 AF-10 ISO-00 L-03 SSO-00 AID-20 IGA-02 EB-11

COA-02 COME-00 INR-10 INRE-00 TRSE-00 XMB-07 (ISO) W

----- 125062

O 051705Z MAR 74

FM AMEMBASSY ACCRA

TO SECSTATE WASHDC IMMEDIATE 2778

UNCLAS SECTION 1 OF 2 ACCRA 1291

E.O. 11652: N/A

TAGS: EFIN

SUBJ: GHANA TUNA DEVELOPMENT LIMITED

1. FOLLOWING IS TEXT OF QUIST OPINION LETTER, DATED MARCH 6, 1974,  
AS REQUESTED.

2. BEGIN TEXT: DEAR MR. MORGAN, GHANA TUNA FISHING DEVELOPMENT  
COMPANY LIMITED. WE ACT FOR THE ABOVE-NAMED COMPANY.  
THE OVERSEAS PRIVATE INVESTMENT CORPORATION (HEREINAFTER  
CALLED "OPIC") HAS ASKED OUR OPINION AS TO THE VALIDITY OF  
CERTAIN AGREEMENTS, DOCUMENTS AND GOVERNMENTAL APPROVALS (IF  
ANY) EXECUTED OR ISSUED, OR TO BE EXECUTED OR ISSUED, AND OF  
CERTAIN CONDITIONS WITH RESPECT TO THE FINANCIAL AND OPERATION  
BY GHANA TUNA FISHING DEVELOPMENT COMPANY LIMITED (BEING  
INCORPORATED IN GHANA AS NUMBER 5720 AND HEREINAFTER REFERRED  
TO AS "THE COMPANY") OF ENTERPRISES IN DEVELOPING COUNTRIES IN  
COMMERCIAL FISHING AND OTHER INDUSTRIES (HEREINAFTER REFERRED  
TO AS "THE PROJECTZL AS MORE FULLY DESCRIBED IN A CERTAIN LOAN  
AGREEMENT BETWEEN OPIC AND THE COMPANY DATED 6TH MARCH,  
1974 (HEREINAFTER REFERRED TO AS "THE LOAN AGREEMENT").

BY AN AGREEMENT DATED THE 9TH DAY OF OCTOBER, 1972,  
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA AND THE  
COMPANY, THE COMPANY WAS EXEMPTED FROM THE PROVISIONS OF  
SECTION 3(1)(A) OF THE FISHERIES DECREE, 1972, (N.R.C.D.87).

THE OPINION EXPRESSED HEREIN PERTAINS ONLY TO MATTERS

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EXISTING IN THE REPUBLIC OF GHANA AND IS BASED SOLELY UPON

THE LAWS OF THE REPUBLIC OF GHANA.

WE ARE FAMILIAR WITH THE CORPORATE RECORDS OF THE COMPANY AND WITH JUDICIAL OR ADMINISTRATIVE PROCEEDINGS AND APPROVALS AFFECTING THE COMPANY; WE HAVE EXAMINED THE AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN AND IN THE LOAN AGREEMENT, COPIES CERTIFIED TO OUR SATISFACTION OF CORPORATE DETERMINATIONS AND PROCEEDINGS RELATED THERETO, AND SUCH OTHER DOCUMENTS, RECORDS AND FACTS AS WE HAVE DEEMED NECESSARY OR APPROPRIATE IN CONNECTION THEREWITH. (UNLESS OTHERWISE SPECIFIED, EACH TERM IN THIS OPINION BEGINNING WITH CAPITAL LETTERS SHALL HAVE THE DEFINITION GIVEN IN THE LOAN AGREEMENT).

BASED ON THE FOREGOING AND HAVING REGARD TO LEGAL CONSIDERATIONS WHICH WE DEEM APPROPRIATE, IT IS OUR OPINION THAT

(1) THE COMPANY IS A CORPORATION DULY ORGANIZED, VALIDLY EXISTING AND IN GOOD STANDING UNDER THE LAWS OF THE REPUBLIC OF GHANA AND IT IS DULY QUALIFIED AND ICENSED TO DO BUSINESS AND IS IN GOOD STANDING IN ALL JURISDICTIONS IN WHICH THE CHARACTER OF ITS PROPERTY OR THE NATURE OF ITS BUSINESS MAKES SUCH QUALIFICATIONS OR LICENSING NECESSARY.

(2) THE COMPANY HAS THE POWER AND GHANAIAI GOVERNMENTAL APPROVAL TO OWN AND OPERATE FISHING BOATS AND OTHER PROPERTIES, TO CARRY ON ITS BUSINESS, TO BORROW MONEY AND CREATE A CHARGE ON ITS BOATS AND OTHER PROPERTIES, AND TO MAKE AND PERFORM THE LOAN AGREEMENT, THE NOTES AND EACH AGREEMENT, UNDERTAKING AND OBLIGATION REFERRED TO THEREIN, INCLUDING THOSE DESCRIBED IN SUBSECTION 4.6 OF THE LOAN AGREEMENT (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "SUPPLEMENTARY AGREEMENTS").

(3) THE EXECUTION, DELIVERY AND PERFORMANCE BY THE COMPANY OF THE LOAN AGREEMENT, THE NOTES, THE SUPPLEMENTARY AGREEMENTS, AND ALL OTHER AGREEMENTS AND INSTRUMENTS TO WHICH IT MAY BE A PARTY AS CONTAINED THEREIN:- (I) HAVE UNCLASSIFIED

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BEEN DULY AUTHORISED BY ALL NECESSARY COMPANY ACTION;  
(II) WILL NOT VIOLATE OR CONSTITUTE A DEFAULT UNDER ANY PROVISION OF LAW, ANY ORDER OF ANY COURT OR OF ANY GHANAIAI AGENCY OR INSTRUMENTALITY, OR ANY OF THE PROVISIONS OF THE REGULATIONS, ARTICLES OF THE ASSOCIATION OR MEMORANDUM OF ASSOCIATION OF THE COMPANY AND WILL NOT RESULT IN THE BREACH OF OR CONSTITUTE A DEFAULT UNDER, OR RESULT IN THE IMPOSITION OF ANY SECURITY INTEREST OR

ENCUMBRANCE UPON ANY ASSETS OF THE COMPANY (OTHER THAN AS PERMITTED BY SUBSECTION 7.1 OF THE LOAN AGREEMENT UNDER ANY AGREEMENT OR INSTRUMENT (FOR BORROWED MONEY OR OTHERWISE) OR OTHER REQUIREMENT TO WHICH THE COMPANY OR ANY OF ITS PROPERTIES MAY BE BOUND OR AFFECTED).

NO SHAREHOLDER OR GOVERNMENTAL ACTION IS REQUIRED WITH RESPECT TO THE LOAN AGREEMENT OR SUPPLEMENTARY AGREEMENTS.

(4) THE LOAN AGREEMENT TO BE DULY EXECUTED AND DELIVERED TO YOU AS OF MARCH 6, 1974 ON BEHALF OF THE COMPANY WILL CONSTITUTE A LEGAL, VALID AND BINDING AGREEMENT AND OBLIGATION OF THE COMPANY ENFORCEABLE IN ACCORDANCE WITH ITS TERMS.

THE NOTES IN THE AGGREGATE PRINCIPAL AMOUNT OF UNITED STATES DOLLARS SIX HUNDRED AND FIFTEEN THOUSAND U.S. DOLLARS (U.S. \$615,000) DULY EXECUTED AND DELIVERED TO YOU ON BEHALF OF THE COMPANY CONSTITUTE LEGAL, VALID AND BINDING OBLIGATIONS OF THE COMPANY ENFORCEABLE IN ACCORDANCE WITH THEIR TERMS. THE SUPPLEMENTARY AGREEMENTS DULY EXECUTED AND DELI  
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ACTION OPIC-12

INFO OCT-01 AF-10 ISO-00 L-03 SSO-00 AID-20 IGA-02 EB-11

COA-02 COME-00 INR-10 INRE-00 TRSE-00 XMB-07 /078 W  
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TO SECSTATE WASHDC IMMEDIATE 2779

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TAXES, ASSESSMENTS, FEES AND OTHER GOVERNMENTAL CHARGES WHICH ARE DUE AND PAYABLE ON THE COMPANY, ITS ASSETS, INCOME AND FRANCHISES.

THE CHARGES, ACCRUALS AND RESERVES ON THE BOOKS OF THE COMPANY IN RESPECT OF GHANAIAN TAXES FOR EACH FINANCIAL YEAR AND PART THEREOF TO DATE ARE ADEQUATE, AND THERE IS NO MATERIAL ASSESSMENT FOR ADDITIONAL TAXES FOR ANY SUCH FISCAL PERIOD OR PART THEREOF OR ANY BASIS THEREFOR.

(7) THE COMPANY'S AUTHORISED CAPITAL IS 300,000

SHARES OF NO PAR VALUE AND DIVIDED INTO 100,000 "A" SHARES, 100,000 "B" SHARES AND 100,000 "C" SHARES. ONE HUNDRED AND SIXTY FIVE THOUSAND (165,000) SHARES HAVE BEEN ISSUED AS FOLLOWS-55,200 "A" SHARES 55,200 "B" SHARES AND 55,200 "C" SHARES AT CEDIS 2.50 (TWO CEDIS FIFTY PESETAS) PER SHARE. ACCORDING TO THE INFORMATION PROVIDED BY THE COMPANY AND THE RETURNS FILED BY THE COMPANY AT THE GHANA GOVERNMENT COMPANY'S REGISTRY THE ISSUED CAPITAL HAS BEEN FULLY PAID AND THE GOVERNMENT ASSESSMENT ON THE SAID CAPITAL HAS ALSO BEEN PAID.

(8) OTHER THAN THE SPECIFIC AUTHORIZATIONS AND APPROVALS HERETOFORE OBTAINED BY THE COMPANY, NO REGISTRATION, LICENSE, AUTHORIZATION, APPROVAL, EXEMPTION OR OTHER FROM ANY AUTHORITY OF THE REPUBLIC OF GHANA OR ANY OTHER JURISDICTION OR ANY GOVERNMENTAL SUBDIVISION THEREOF IS REQUIRED:

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(A) TO ENTITLE THE COMPANY TO EXECUTE, DELIVER AND PERFORM THE LOAN AGREEMENT, THE NOTES AND ALL AGREEMENTS AND DOCUMENTS REFERRED TO THEREIN INCLUDING THE SUPPLEMENTARY AGREEMENTS AND TO CONDUCT ITS BUSINESS AND OPERATE THE PROJECT, OR

(B) TO PERMIT NOTEHOLDERS TO TRANSFER THEIR INTEREST IN THE LOAN AGREEMENT AND NOTES (OR TO TRANSFER BENEFICIAL INTERESTS THEREIN) TO ANY PERSONS(S) OR FIRMS(S) WHETHER OR NOT CITIZEN(S) OR ORGANIZED UNDER THE LAWS OF THE REPUBLIC OF GHANA, OR

(C) TO AUTHORIZE THE ADVANCE TO BE MADE ON THE DATE HEREOF AND TO ASSURE TO THE EXTENT NOW POSSIBLE AND ON THE TERMS SET FORTH IN THE LETTERS OF 31ST OCTOBER 1972 AND 25TH MAY 1973 FROM THE BANK OF GHANA, THAT SUFFICIENT FOREIGN EXCHANGE SHALL BE MADE AVAILABLE FOR PAYMENT OF ALL AMOUNTS DUE TO THE NOTEHOLDERS UNDER THE LOAN AGREEMENT; OR

(D) TO PERMIT ANY NOTEHOLDER TO EXERCISE ANY RIGHT, PRIVILEGE OR REMEDY AFFORDED IN OR UNDER THE LOAN AGREEMENT, THE NOTES AND THE APPLICABLE LAW, AND TO ENFORCE ANY OF ITS RIGHTS, PRIVILEGES OR REMEDIES IN ANY COURT OF COMPETENT JURISDICTION IN GHANA.

(9) THE BANK OF GHANA'S APPROVAL GIVEN IN THE LETTER DATED THE 31ST OF OCTOBER 1972 AS AMENDED BY THE LETTER DATED THE 25TH MAY 1973 HAS GIVEN THE COMPANY THE RIGHT TO OPERATE A BANK ACCOUNT IN THE UNITED STATES FOR THE PURPOSE OF HONOURING THE NOTES OUT OF FUNDS DEPOSITED IN THE SAID ACCOUNT AND THEREFORE NO FURTHER AUTHORISATION IS REQUIRED FROM THE GHANA MONETARY

AUTHORITY FOR THE TRANSFER OF MONIES TO THE UNITED STATES FOR  
PAYING THE LOAN AND OR INTEREST THEREON.

(10) APPROVAL FOR FOREIGN INVESTMENT GIVEN BY THE BANK OF  
GHANA BY A LETTER DATED 19TH JULY 1972 GIVING STAR-KIST INC.  
AND NICHIRO GYOGYO KAISHA INC. THE RIGHT TO INVEST IN THE COMPANY  
IS VALID ACCORDING TO GHANAIAAN LAW AND STILL SUBSISTING. ALSO  
THE (APPROVAL DATED THE 9TH OCTOBER 1972 GIVEN UNDER THE CAPITAL  
INVESTMENT ACT 1963 AS AMENDED IS VALID) AND BOTH APPROVALS  
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SUFFICIENTLY COVER THE PROJECT.

(11) THE COMPANY HAS DULY ACQUIRED AND NOW OWNS THE TWO VESSELS  
KNOWN AS "TRUTH" AND "SELF-RELIANCE". THESE TWO VESSELS ARE  
THE SUBJECT OF A SHIP MORTGAGE IN YOUR FAVOUR DATED THE DATE  
HEREOF (SAID SHIP MORTGAGE BEING ONE OF THE SUPPLEMENTARY  
AGREEMENTS HEREINBEFORE REFERRED TO).

THE SHIP MORTGAGE WHEN REGISTERED WITH THE REGISTRAR  
OF GHANAIAAN SHIPS WILL CONSTITUTE A VALID, PERFECTED FIRST  
MORTGAGE LIEN ON THE COLLATERAL DESCRIBED THEREIN, SUBJECT TO  
NO PRIOR LIENS, MORTGAGES, SECURITY INTERESTS OR ENCUMBRANCES  
OF ANY KIND WHATSOEVER, EFFECTIVE AGAINST CREDITORS OF AND  
PURCHASERS FROM THE COMPANY, AND NO OTHER RECORDING, REGISTRATION  
OR FILLING WILL BE REQUIRED IN ORDER TO PRESERVE AND MAINTAIN  
SUCH PERFECTED FIRST MORTGAGE LIEN IN YOUR FAVOUR.

(12) THERE ARE AT PRESENT NO TAXES IMPOSED BY THE GOVERNMENT  
OF GHANA OR ANY GOVERNMENTAL SUBDIVISION THEREOF WHICH ARE  
APPLICABLE TO THE LOAN OR PAYMENTS UNDER THE LOAN. YOURS  
FAITHFULLY, QUIST, BROWN, AIDOO & CO., SOLICITORS. END TEXT.

3. FYI. RE PARA 3 ACCRA 1255 MINISTRY OF ECONOMIC DEVELOPMENT  
DOCUMENT APPROVING INVESTMENT FOR GUARANTY PURPOSES NOT RECEIVED  
AS OF COB MARCH 5. MINISTRY OFFICIAL DECLINED MISSION OFFER  
TODAY TO SEND SOMEONE TO GET A COPY. MINISTRY CLOSED UNTIL  
THURSDAY MARCH 7 BECAUSE OF GHANAIAAN HOLIDAY MARCH 6.  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
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**Control Number:** n/a  
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**Disposition Action:** n/a  
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**Disposition Case Number:** n/a  
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**Disposition Date:** 01 JAN 1960  
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**Secure:** OPEN  
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**Subject:** GHANA TUNA DEVELOPMENT LIMITED  
**TAGS:** EFIN, EFIS, GH, OPIC  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005